HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Description of the case

Special Appeal No. 106 of 2004

G.B. Pant University of Agriculture & Technology

Vs.

Vikram Prasad & others

Approved for reporting.

Not Approved for reporting

Date of Decision: 13.09.2006.

Initial of Judges:

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.....

.....

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No. 106 of 2004

G.B. Pant University of Agriculture & Technology,
Pant Nagar, District Udham Singh Nagar,
Through Vice Chancellor. ……. Appellant

Versus

1. Vikram Prasad S/o Sri Chandrika Prasad,
Technical Assistant,
Plant Pathology (Potato) Department,
Agriculture College,
G.B. Pant University of Agriculture & Technology,
Pant Nagar, District Udham Singh Nagar.
2. Rakesh Singh S/o Sri Leela Singh,
Technical Assistant, Department of Breeder,
Seed Production,
G.B. Pant University of Agriculture & Technology,
Pant Nagar, District Udham Singh Nagar.
3. Chotte Lal S/o Sri Damodar Sharma,
Technical Assistant, AICRP on Soyabeen Project,
Department of Soil Science, Agriculture College,
G.B. Pant University of Agriculture & Technology,
Pant Nagar, District Udham Singh Nagar.
4. Narendra Singh S/o Sri Tara Singh
Technical Assistant, AICRP on Oil Seed Project,
Department of Plant Pathology, Agriculture College,
G.B. Pant University of Agriculture & Technology,
Pant Nagar, District Udham Singh Nagar.
5. Ram Babu Sachan S/o Sri Ram Swaroop Singh,
Technical Assistant, AICRP on Soyabeen Project
Department of Plant Pathology, Agriculture College,
G.B. Pant University of Agriculture & Technology,
Pant Nagar, District Udham Singh Nagar.
6. Anil Kumar Singh S/o Sri Abhay Singh,
Technical Assistant, National Fellow Science,
Agriculture College,
G.B. Pant University of Agriculture & Technology,
Pant Nagar, District Udham Singh Nagar.
7. A.K. Tyagi S/o Sri K.N. Singh Tyagi,
Technical Assistant, University General Budget Project,
G.B. Pant University of Agriculture & Technology,
Pant Nagar, District Udham Singh Nagar.

…… Respondents

Mr. Rajendra Dobhal and Mr. Manoj Shah, Advocates for the appellant.
Mr. S.N. Babulkar. Senior Counsel with Mr. Yogesh Pacholiya, Advocate for the respondents.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. Rajesh Tandon, J.

Dated: 13th September, 2006

RAJESH TANDON, J.

By the present Special Appeal, the appellant has challenged the judgment dated 06.08.2004 passed in Writ Petition No. 54 of 2000 (S/S) as well as the order dated 15.09.2004 passed in Review Petition No. 5183 of 2004.

2. Brief stated, a writ petition [W.P. No. 54 of 2004 (S/S)] was filed by the petitioners (respondents herein) praying for a direction in the nature of mandamus directing the respondents to pay the sanctioned scale of salary (1640-2900) to the petitioners w.e.f. 22.07.1995 i.e. the date of absorption along with arrears and interest. Further prayer was made in the writ petition for a writ of mandamus directing the respondents to confer the future benefits to the petitioners accruing on the scale of Rs. 1600-2900.

3. The facts giving rise to the writ petition were that the University known as G.B. Pant Krishi Evam Prodyogik Vishwavidyalaya was created under the U.P. Krishi Evam Prodyogik Vishwavidyalaya Adhiniyam 1958. Various

agricultural research projects namely All India Coordinate Research Projects (AICRP) on Potato, Wheat, Sugarcane etc. sponsored and financed by the Central Government through Indian Coucil of Agriculture and Research, Krishi Bhawan, New Delhi (ICAR), were being run by the University. In the aforesaid projects, various Research Associates were functioning. The petitioners (respondents herein) were working as Technical Assistants in the projects namely AICRP Pathology (Potato), Breeder Seed Production, AICRP Soyabeen (Soil Science), AICRP Oil Seed (Pathology), AICRP Soyabeen (Pathology), NFP Animal Science and University General Budget (Veterinary).

4. The aforesaid University, pursuant to the State Government's decision, absorbed the petitioners in W.P. No. 54 of 2000 (S/S) (respondents herein) on the post of Technical Assitants w.e.f. 22.07.1995. While absorbing the respondents on the post of Technical Assistants, on 01.02.1996, an Office Order was issued from the G.B. Pant University of Agriculture and Technology, Pant Nagar, wherein it was clearly mentioned that the Research / Teaching / Extension Associates are hereby absorbed on the post of Technical Assistants / Senior Technical Assistants as indicated against each. The Officer Order dated 01.02.1996 reads as under:

> **"OFFICE ORDER**
>
> In continuation of Officer Order No. PMB/Estt. Dated Jan. 19, 1996, the following Research / Teaching / Extension Associates are hereby absorbed on the post of Technical Assistant / Senior Technical Assistant as indicated against each:

A. Senior Technical Assistant (Pay scale Rs. 1640-2900)

S. No.	Name of RA/TA/EA	Name of Project	Basic Pay
1.	Dr. (Mrs.) Rekha Purohit	AICRP on Agroforestry	Rs. 1640.00
2.	Sri. H.R. Jaiswal	” Vegatable	”
3.	Smt Neeta Gaur	” Wheat	”
4.	Sri. T.V. Singh	” Wheat	”
5.	Mr. Kanak Saxena	” Wheat	”
6.	Sri Tej Pratap	” Wheat	”
7.	Sri. D.C. Bashketi	” Sorghum Improvement	”
8.	Sri P.K. Pandey	” Sorghum Improvement	”
9.	Sri S.K. Jain	” Vegetable	”

B. Technical Assitant (Pay scale Rs. 1400-2600)

1.	Sri S.C. Sengar	AICRP on Potato	Rs. 1400.00
2.	Sri I.P. Singh	” Wheat	”
3.	Sri K.A. Khan	” Sugarcane	”
4.	Sri A.K. Singh	” Soyabean	”
5.	Sri Vikram Prasad	” Potato	”
6.	Sri Raj Kumar	” Soyabean	”
7.	Sri Rakesh Singh	” Breeder Seed Production	”
8.	Sri Chhotey Lal	” Soyabean	”
9.	Sri R.A. Khan	” Oil Seed	”
10.	Sri Susheel Kumar	” Soyabean	”
11.	Sri Anil Kumar Singh (Animal Science)	National Fellow Project	”
12.	Sri Narendra Singh	AIRCP on Oil Seed	”

The concerned TA/RAS are advised to submit their documents and medical fitness certificate from University Medical Officer I/C, in the PM(A) Section. These orders shall be operative w.e.f. 22.7.95. The terms and conditions of services of these TAS/STAS shall be governed as per university rules.”

5. The names of the petitioners were mentioned on the pay scale of Rs. 1400-2600 under Clause B as Technical Assistants.

Subsequently, another Office order was issued on 15.07.1996 showing the absorption of Senior Technical Assistants on the pay scale of Rs. 1640-2900. The said Officer Order also shows the bifurcation of Senior Technical Assistants and Technical Assistants. The said Office Order dated 15.07.1996 is also quoted below:

"OFFICE ORDER

In pursuance of decision taken by the Board of Management in its meeting held on 22.7.95 and on 14/15.12.1995 and the orders of the Vice Chancellor, the following Research / Teaching / Extension Associates are here offered letter of absorption on the post of Technical Assistant / Senior Technical Assistant as indicated against each:

A. Senior Technical Assistant (Pay scale Rs. 1640-60-2600-EB-75-2900)

S.No.	Name of RA/TA/EA S/Sri	Name of Project
1.	Haseen Ahmed	Agrometeorology Ranichauri
2.	Dal Chand	Agriculture College (General Budget) against Investigator
3.	Himanshu Garg	AICRP on PHT against STA
4.	Raza Jaywanth	Apple Scabe Project, Ranichauri

B. Technical Assistant (Pay scale Rs. 1400-40-1600-50-2300-EB-60-2600)

1.	R.B. Sachan	AICRP on Soyabean
2.	Ajit Kumar	AICRP on Sugarcane
3.	Mrs. Renu Singh	AICRP on Seed Technology
4.	Mohd. Fareed	Optimization of Ground water
5.	Smt. Suman Sharma	College of Home Science
6.	A.K. Tyagi	College of Vety. Science
7.	Shiv Ji Singh	AICRP on Forage Crops
8.	Vijendra Singh	Agronomic Research

9.	O.P. Ojha	AICRP on Oil Seeds
10.	Yesh Pal	AICRP on Oil Seeds
11.	K.V. Singh	AICRP on Wheat

The concerned TA/RA/EAs are advised to submit their documents and medical fitness certificate from University Medical Officer Incharge in the Personnel Management Section (A) only after which formal letter of absorption will be issued."

6. A counter affidavit has been filed by the University in the writ petition and in paragraph IV thereof, if has been stated that the University, in order to help these Research / Extension Associates formulated a scheme for their absorption on regular pay scales. The Board of Management of the University approved a procedure for absorption of Research / Extension Associates depending upon their qualification, seniority, availability of posts and reservation in the two cadres. The said paragraph IV of the counter affidavit it is quoted below:

"IV. That the University in order to help these Research/Extension Associates formulated a scheme for their absorption on regular pay scales. The Board of Management of the University approved a procedure for absorption of Research/Extension Associates etc. depending upon their qualifications, seniority, availability of posts and reservation rosters in tow cadres.

i) Technical Assistant, Pay Scale Rs. 1400-2600.

ii) Senior Tech. Assistant, Pay Scale Rs. 1640-2900 . A copy of procedure laid down by the Board is at **Annexure CA-I.** The absorption of the petitioners on the post to Technical Assistant in the pay scale of Rs. 1400-2600 has been done strictly as per the approved procedure as they have only Bachelors Degree qualification and for the post

iii) STA (1640-2900) the qualification is Master's Degree Hence there being no force in writ it is liable to be dismissed."

7. Similar statement has been made in paragraph 10 of the counter affidavit mentioning the scale of pay sanctioned by the Board of Management in two different cadres. Paragraph 10 of the counter affidavit reads as under.

> "10. That the contents of the para no. 7 of the writ petition are partly admitted. It may however be pointed out that irrespective of the nomenclature and or scale of pay sanctioned in the project the Board of Management has approved two different pay scale for two different cadre viz.
>
> | | |
> |---|---|
> | Technical Assistant | Rs. 1400-2600 |
> | Sr. Tech. Assistant | Rs. 1640-2900 |
>
> The qualification for absorption on these posts is also different. While for absorption on the post of T.A. the qualification is Bachelor's Degree, for absorption as S.T.A. it is Master's Degree. Besides this the imcumbent should have Master's Degree in the field of specialization and also must meet the requirement of seniority. Therefore, the contention that the post in the project was sanctioned in a higher scale in immaterial."

8. Along with the counter affidavit, the University has filed the resolution of Board of Management as CA-1, by which, the policy of absorption was decided by the Board of Management. The relevant portions are quoted below:

> संकल्प सं0:– पंतनगर कृषि विश्व विद्यालय के विभिन्न संकायों में कार्यरत प्रसार/शिक्षण सहयोगियों को तकनीकी सहायकों/वरिष्ठ तकनीकी सहायकों के पदों पर समायोजन के सम्बन्ध में।

उक्त प्रस्ताव पर विचार विमर्श किया गया। विचारोपरांत प्रबन्ध द्वारा पारित किया गया कि प्रबन्ध परिषद का माननीय सदस्य डा0 (श्रीमती) इन्द्रिरा हृदयेश की अधयक्ष्ता में पारित समिति की संस्तुतियों को स्वीकार करते हुए तकनीकी सहायक वेतनमान रू0 1400–2600 एवं वरिष्ठ तकनीकी सहायक वेतनमान रू0 1640–2900 के पदों की उपलब्धता के आधार पर शासन के आरक्षण सम्बन्धी नियमों को पालन करते हुए शोध/प्रसार/शिक्षण सहयोगियों को तकनीकी सहायक/वरिष्ठ तकनीकी सहायक के रिक्त पदों पर समायोजित कर दिया जाये।

.....

2. वर्तमान में तकनीकी सहायक तथा वरिष्ठ तकनीकी सहायकों के वर्ष वेतनमान में, जिससे उत्पन्न कठिनाइयों के निराकरण हेतु समिति निम्नवत वेतनमान निर्धारण किये जाने हेतु संस्तुति करती हैः–

1. वरिष्ठ तकनीकी सहायक 1640–60–2600–द0रो0–75–2900
2. तकनीकी सहायक 1400–40–1600–50–2300–द0रो0–60–2600

3. यदि किसी रिक्त वरिष्ठ तकनीकी सहायक के पद हेतु वरिष्ठ एम0एस0सी0 डिग्रीधारक शोध/प्रसार/षिक्षण सहयोगी अपेक्षित विषय विषेशज्ञता के अनुसार आवश्यकता पूरी नही करता है तो उसे स्नातक डिग्री की योग्यता के आधार पर तकनीकी सहायक का पदनाम एवं वेतनमान दिया जा सकता है, जिसके लिए उसे लिखित रूप में अपनी सहमति देनी होगी।

9. The matter came up for hearing before the learned Single Judge. The learned Single Judge has relied upon the letter dated 21.03.1994 issued by Indian Counsel of Agriculture Research, Krishi Bhawan, New Delhi to all the Agriculture Universities including the present University regarding the sanction of budget for the five year plan (1992-1997) and the pay scale of Technical Assistants has been shown as Rs. 1640-2900. Further reliance has been placed on the letter dated 06.04.2000 from Government of India, Department of Agriculture, Krishi Bhawan, New Delhi by which rs. 2687.767/- lacs have been

allocated as ICAR share for research programme and in this letter also the pay scale of Technical Assistants has been shown to be Rs. 1640-2900, these letters have been issued from the Department of Agriculture, Research and Education as ICAR.

10. The learned Single Judge has allowed the writ petition vide judgment dated 6.8.2004 and held that the petitioners are entitled to the pay scale of Rs. 1640-2900 (unrevised). Thereafter the respondents have also filed a Review Petition bearing No. 5183 of 2004, which was also rejected by the learned Single Judge vide order dated 15.9.2004.

11. Of course, the grade of Technical Assistants has been shown as Rs. 1640-2900 for which the reliance has been placed by the learned Single Judge. At the same time, in a letter dated 13.11.1995 a reply has been given wherein it has been clarified that so far as Technical Assistants and Senior Technical Assistants are concerned, there are no sanctioned posts according to the budget. The said reply is quoted below:

> "सस्थापनाधिकारी
>
> कृप्या अपने पत्रांक संख्या/1129, दिनांक अक्टूबर 28,29 का सन्दर्भ लेने का कष्ट करें जिसके द्वारा तकनीकी सहायक/वरिष्ठ तकनीकी सहायक के पदों पर शोध/शिक्षण/प्रसार सहयोगियों के समायोजन से सम्बन्धित सूचना मांगी गई है। वाछित सूचना निर्धारित प्रपत्र में सूचनार्थ एंव आवश्यक कार्यवाही हेतु प्रेषित है।
>
> निदेशालय के सामान्य आय–व्ययक में तकनीकी सहायक/ वरिष्ठ तकनीकी सहायक का बजट के अनुसार कोई पद स्वीकृत नहीं है। अतः इस सम्बन्ध में सूचना शून्य समझी जाये।
>
> इन निदेशालय के सामान्य आय–व्ययक में बजट के अनुसार अनुसंधान सहायक परिवर्तित कनिष्ठ शोध अधिकारी वेतनमान रू0 2000–4000 के 21 पद रिक्त है।"

12. Since in the aforesaid letter it was clearly mentioned by the Director Research that there are no sanctioned posts according to the budget for the posts of the Technical Assistants and Senior Technical Assistants, the University by Office Order dated 1.02.1996 has made a policy for absorption on the post of Technical Assistants and Senior Technical Assistants on the pay scale of Rs, 1400-2600 and Rs. 1640-2900 respectively.

13. In view of the aforesaid policy decision taken by the University, the view taken by the learned Single Judge cannot be said to be correct. We are of the opinion that the learned Single Judge has wrongly interpreted the letters of the ICAR and has completely ignored the policy decision taken by the University by which two cadres were created and by creating two cadre, the respondent has opted for the absorption of the petitioners in accordance with clause 3 by which the qualification of post graduation was prescribed for Senior Technical Assistants and Graduation was prescribed for Technical Assistants and the pay scale of Rs. 1640-2900 was prescribed for Senior Technical Assistants and Rs. 1400-2600 was prescribed for Technical Assistants.

14. Reliance has been placed on the judgment in the case of **M.P. Rural Agriculture Extension Officers Association Vs. State of M.P. and another** reported in **AIR 2004 SC 2020** on the principle of equal pay for equal work, wherein the Apex Court has died held in paragraph 18 as under:

> "18. The principle was reiterated in V. Markendeya (supra) observing:

13. In view of the above discussion we are of the opinion that where two classes of employees perform identical or similar duties and carrying out the same functions with the same measure of responsibility having same academic qualification, they would be entitled to equal pay. If the State denies them equality in pay, its action would be violative of Articles 14 and 16 of the Constitution, and the Court will strike down the discrimination and grant relief to the aggrieved employees. But before such relief is granted the Court must consider and analysis the rational behind the State action in prescribing two different scale of pay. If on an analysis of the relevant rules, orders nature of duties, functions, measure of responsibility, and educational qualifications required for the relevant posts, the Court finds that the classification made by the State in giving different treatment to the two classes of employees is founded on rational basis having nexus with the objects sought to be achieved, the classification must be upheld. principle of equal pay for equal work is applicable among equals, the cannot be applied to unequals."

15. In the case of **M.P. Rural Agriculture Extension Officers Association Vs. State of M.P. and another** (supra), reliance was placed on the judgment of AIR 1993 SC 286. The Apex Court has held in paragraphs 24 of 25 as under:

"24. In Pramod Bhartiya (supra), Jeevan Reddy, J. categorically held that burden to prove that a discrimination has been committed is upon the petitioners failed to discharge their burden.

25. Yet again in Shyam Babu Verma (supra) N.P. Singh, J. speaking for a three-Judge Bench observed:

"……The nature of work may be more or less the same but scale of pay may

> vary based on academic qualification or experience which justifies classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of 'equal pay for equal work' to them……"

16. The question of equal pay for equal work had again came up for interpretation in the case of **U.P. State Sugar Corporation Ltd. and another Vs. Sant Raj Singh and others** reported in **2006 AIR SCW 3013,** wherein the Apex Court, relying upon various judgments, has held in paragraphs 21, 22, 23, 24, 28 and 29 as under:

> "21. Yet again in *Shyam Babu Verma and others v. Union of India and others* [(1994) 2 SCC 521)] a 3-Judge Bench of this Court opined:
>
> > "……..The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of 'equal pay for equal work' to them."
>
> 22. In Government of *W.B. vs. Tarun K. Roy* [(2004) 1 SCC 347], it was clearly laid down

that the holders of a higher qualification can be treated to be a separate class, holding:

> "20. Question of violation of Article 14 of the Constitution of India on the part of the State would arise only if the persons are similarly placed. Equally clause contained in Article 14, in other words, will have no application where the persons are not similarly situated or when there is a valid classification based on a reasonable differentia…."

23. The said decision has been noticed by another Bench of this Court in *M.P. Road Agriculture Extension Officers Association v. State of M.P. and another* [(2004) 4 SCC 646] stating:

> "22. Furthermore, as noticed hereinbefore, a valid classification based on educational qualification for the purpose of grant to pay has been upheld by the Constitution Bench of this Court in P. Narasinga Rao."

24. The First Respondent admittedly did not possess the requisite qualification. He merely claimed a higher scale of pay only because Sri. B.P. Srivastava and Sri Shyam Sunder Shukla had been paid. It has not been disputed before us that the case of Sri Srivastava stood on different footing and his scale of pay had to be protected in terms of Section 16 of the Act. So far as Sri Shyam Sunder Shukla is concerned, he may proceed on the basis that the corporation took a wrong decision. The said decision however was not questioned by the first respondent before the High Court. No foundational facts had been placed before the High Court in relation thereto. We would not like to enter into the controversy as to whether his case could have been considered by the Committee or on what basis the Committee considered the cases of 7 candidates and granted higher scales of pay to 4 candidates as the validity thereof is not in question. Assuming that the Corporation was wrong, the same by itself would not clothe the First Respondent even legal right to claim a higher scale of pay. On what basis the Selection Committee selected four employees out of the seven is not

known. Three persons admittedly were not selected. If the plea put forward by the respondent is accepted, these employees also would be entitled to the same scale of pay as given to the said Sri Shukla, although they have been found to be not fit therefor. Educational qualification was made the basis for a valid classification in the matter of payment of salary in a particular scale of pay by the Wage Board itself. Only in the year 1989, such a classification was obliterated. The First Respondent had been granted the benefit of the recommendations of the Third Wage Board also. It was a matter of policy decision for the Corporation to consider as to whether a particular category of employees should be taken outside the purview of pay scales recommended by the Wage Board and place them in a higher scale of pay. We, therefore, cannot accept the contention of Sri Dwivedi that only because no such qualification was prescribed at the time of recruitment, the classification made on that basis would be bad in law. Even otherwise, the said contention is not correct as scale of pay was determined by the award of the Wage Board.

28. Yet again in *Union of India and another Vs. International Trading Co. and another* [(2003) 5 SCC 437], this Court Opined:

> "……. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters, there is not discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a part. Even if hypothetically it is accepted that the wrong has been committed in come other cases by introducing a concept of negative equality the respondents cannot strengthen their case……."

29. Moreover, Article 14 has a positive concept. No body can claim equality in illegality."

17. Apart from the aforesaid, in the case of **U.P. State Cement Corporation and others Vs. B.K. Tiwari** reported in **(1998) 1 UPLBEC 265,** the Apex Court has observed in paragraphs 5 and 6 as under:

"5. The respondent accepted the offer given to him by the aforesaid appointment letter and accepted the post of the Manager (P&IR). He joined this post on Feburary 28, 1987 and on April 24, 1987 represented to the appellant that he was entitled to placement in the revised grade of Rs. 1800-2250/- which according to him was applicable to Manager (P&IR) Headquarters. This representation was rejected and this led to filing of the writ petition by the respondent in the High Court which was allowed as aforesaid.

6. We do not think there is much controversy involved in the present case. The respondent said that at the time when he had applied for the post of Manager (E-4) it was in the pay scale of Rs. 1500-2000/- and what was offered to him was the post of Deputy Manager in the pay Scale of Rs. 1400-1800/-. Thus, according to the respondent when he was offered the post of Manager the pay scale had already been revised to Rs. 1800-2250/- to which, he said, he was entitled to. We don't think this contention of the respondent can be accepted. Letter offering him the appointment of Manager is specific. This letter as noted above, was written after the revision of pay scales. Not only that, the letter mentioning the designation of the respondent had also, in clear terms, mentioned the pay scale of the Manager which was being offered to him."

18. In view of the aforesaid, we have no option but to come to the conclusion that the Office Order by which the two cadres

were created by the University as Senior Technical Assistants and Technical Assistants on different pay scales and different qualifications, cannot be said to attract Article 14 or Article 39(d) of the Constitution of India as to give a cause to the respondents to file the writ petition.

19. The Special Appeal, therefore, is allowed and the impugned judgment dated 06.08.2004 passed in Writ Petition No. 54 of 2000 (S/S) is hereby set aside. The reliefs claimed by the petitioners (respondents herein) in the writ petition are rejected. No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**

G